IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

Sunil Kumar Vs. Asu & others

S.B.CIVIL MISC. APPEAL NO.615/1994

Against the award dated 07.09.1994 made by the Motor Accidents Claims Tribunal,Udaipur in Claim Case No.315/1991.

Date of Judgment : 07.09.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Dilip Kawadia for the appellant
Mr.L.D.Khatri for the respondent

BY THE COURT:

This is claimant's appeal against the award dated 07.09.1994 made by the Motor Accidents Claims Tribunal, Udaipur in Claim Case No.315/1991 seeking enhancement over the amount of Rs.1,58,000/- awarded as compensation for the loss suffered by him due to injuries sustained in a vehicular accident.

On 22.06.1991 at about 3.30 p.m. the appellant Sunil Kumar, then 22 years in age, earning Rs.1,500/- per month in

a private job as supervisor with a contractor, while riding his bicycle near Indian Oil Depot, Hiran Magri Sector No.11, Udaipur sustained extensive injuries on being hit from behind by a truck bearing registration No.HNU 8457. The claimant-appellant remained hospitalised for two days at General Hospital, Udaipur and then for 48 days at Vadilal Saharabhai General Hospital, Ahmedabad and his left leg was required to be amputated above the knee. The appellant submitted the claim application on 25.09.1991 claiming compensation for the loss suffered by him against the driver, owner and insurer of the offending truck. Proceedings against the driver were dropped, the owner remained ex parte and the claim application was contested by the insurer of the truck. On the pleadings of the parties, the Tribunal framed the following issues for determination of the questions involved in the case:-

> "(1) आया दिनांक 22-6-91 को विपक्षी नं01 श्री आसु के द्वारा वाहन नं0 एच.एन.यू. 8457 को गफलत व लापरवाही से चलाने के कारण श्री सुनील कुमार दुर्घटनाग्रस्त हुवा और उसके शरीर पर साधारण व गंभीर चोटे पहंची ?
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> (2) आया प्रार्थी क्लेम में बताई गई राशि रूपया 10,88,300/- या अन्य कोई राशि प्रतिकार में विपक्षीगण से पाने का अधिकारी है और यदि हॉ तो कितनी व किस किस से ?
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> (3) आया विपक्षी बीमा कम्पनी के द्वारा जबाब दावे में उठाई गई आपत्तियों के आधार पर विपक्षी बीमा कम्पनी का कोई दायित्व नहीं है ?

(4) दादरसी ?

In oral evidence, the claimant examined himself as AW-1 and his employer and eye-witness to the accident, Babulal as AW-2. The claimant also produced relevant documentary evidence including the bills of his treatment expenditure Ex.1 to Ex.93 and Ex.98, concession certificate for orthopaedically handicapped person Ex.94, permanent disability certificate Ex.95, medical certificate of his father being permanently incapacitated due to paralysis as Ex.96, his discharge certificate from hospital at Ahmedabad Ex.97, certificate of his salary issued by AW-2 Babulal again marked Ex.98, his photographs after leg amputation as Exhibits 100 to 104, his injury report Ex.112 and X-Ray report Ex.113 and so also other relevant investigation papers. No evidence was led by the non-applicants.

Learned Judge of the Tribunal found the accident to have occurred for rash and negligent driving of the truck and rejected the contention of insurer for its exoneration. While considering the question of loss suffered by the claimant and compensation to be awarded, the learned Judge referred to the documentary evidence and noticed the extent of claimant's injuries including fracture of 2/3rd upper right shaft tibia and

fibula and of amputation above knee and of the treatment expenditure about Rs.20,000/- and referred to certain decided cases including that of General Manager, Kerala State Road Transport Corporation Ltd. Vs. Susamma Thomas: 1994 ACJ 1 (SC) and then found the claimant entitled for Rs.25,000/- towards expenditure with the following observations:-

> "समस्त परिस्थितियों पर विचार करने के उपरान्त उपलब्ध साक्ष्य के आधार पर मै उपचार में हुवे खर्चे के उपलब्ध बिलों के आधार पर एवं अन्य आवश्यक खर्चे को शामिल करते हुवे 25,000/- की दिलाई जाना उचित समझता हूँ ।"

The learned Judge referred to the future sufferings of the claimant and then found him entitled for another amount of Rs.1,38,000/- for loss of contribution to the family at Rs.13,800/- per annum by application of multiplier of 10. The learned Judge then added Rs.20,000/- to Rs.1,38,000/- and found the claimant entitled for compensation in the sum of Rs.1,58,000/-. The observations made and the considerations adopted by the learned Judge read as under:-

> "जहाँ तक शादी न होने एवं अन्य भावी जीवन की यातनाओं का उल्लेख किया है वह कुछ तो संभावनाओं पर निभर करते है और कुछ ऐसी है जिनका कोई निराकरण नहीं है। क्षतिपूर्ति की राशि एक परिस्थिति में निदान का साधन ही है। प्रार्थी ने 1150/- की राशि परिवार पर खर्च करना बताया है

और इसी प्रकार प्रार्थी परिवार पर कुल एक वर्ष में 13800/- खर्चा करता था अत: सभी तथ्यों पर विचार कर मैं 10 का गुणक आदर्श मानता हूँ और उसके अनुसार 1,38,000/- + 20,000/- कुल 1,58,000/- क्षतिपूर्ति राशि दिलाई जाना न्यायोचित पाता हूँ ।"

In the manner aforesaid, the Tribunal has made the award in the sum of Rs.1,58,000/- in favour of the claimant-appellant and allowed interest at the rate of 12% per annum from the date of filing of the application with stipulation of interest at the rate of 15% per annum on the insurer's failure to make payment within two months. The claimant has questioned the award made by the Tribunal in this appeal being grossly inadequate and too low.

Learned counsel Mr.Dilip Kawadia appearing for the appellant has referred to the evidence available on record and submitted that the Tribunal has been seriously in error in making an award for a meagre amount of Rs.1,58,000/- without considering the specific heads of losses to be considered by the Tribunal while awarding compensation in such injury and disablement cases. Learned counsel has referred to and relied upon the decisions in R.D.Hattangadi Vs. Pest Control (India) Pvt. Ltd. and others: 1995 ACJ 366, Laduram Vs. Avtar Singh and others: 2006 R.A.R. 244 (Raj.), Prahlad Rai Vs. Pradeep Kumar and others: 2003 R.A.R. 392

(Raj.) and Premlata and others Vs. Niraj Kumar and others: MACD 2006 (1) (Raj.) 334. Learned counsel Mr.L.D.Khatri appearing for the insurer has supported the impugned award and has referred to the decision of the Hon'ble Supreme Court in New India Assurance Co. Ltd. Vs. Charlie and another: 2005 ACJ 1131 to submit that separate compensation for permanent disability cannot be granted and the quantum of compensation fixed by the Tribunal with reference to loss of income remains substantial and adequate and the ultimate award made by the Tribunal in the sum of Rs.1,58,000/- cannot be said to be too low or insufficient even though it carries an obvious arithmetical error in summing up Rs.20,000/- with Rs.1,38,000/- instead of Rs.25,000/- allowed by the Tribunal.

Having heard learned counsel for the parties and having scanned through the entire record and having examined the impugned award, this Court is satisfied that the award made by the Tribunal has fallen too short of the amount of just compensation and, therefore, deserves suitable modification.

The manner of dealing with the present accident claim case by the learned Judge of the Tribunal leaves much to be desired. It remains indisputable that claimant, then 22 years

in age, had sustained grievous injury that ultimately led to amputation of his left leg above knee and had suffered long drawn treatment and hospitalisation at Ahmedabad. The Tribunal has noticed the bills of treatment expenditure produced on record in the sum of Rs.20,000/- and yet has allowed only Rs.25,000/- against all kind of expenditure and has not considered awarding of reasonable compensation towards the attendants, towards dietary expenditure and towards transportation. Yet further, the Tribunal has noticed the claimant's earning at Rs.1,500/- per month and has also noticed the fact of his father suffering from paralysis but in respect of future loss of earning capacity, has merely taken an amount of Rs.1,150/- per month and applying an entirely unjustified multiplier of 10 has assessed Rs.1,38,000/- towards pecuniary loss and has assumed the compensation amount of Rs.1,58,000/- to be the end of road for the hapless claimant. It remains rather inexplicable that the Tribunal has totally omitted to award reasonable non-pecuniary loss in this case of amputation of leg above knee of a 22 years old boy. The impugned award cannot be approved from any stand point. The Hon'ble Supreme Court has specifically pointed out the relevant considerations for awarding compensation in R.D.Hattangadi's case (supra) thus:

> "Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

This Court in Prahlad Rai's case (supra) has observed thus:

> "Keeping in view of the age, usual deprivation which the appellant has suffered and would suffer in future on account of the permanent disablement as also the loss of amenities of life as in the instant case, the appellant has lost one of the legs from above the knee, therefore, it would be difficult for him to walk, run, sit properly and may not be in a position to drive vehicle or even may find difficulty in moving from one place to another without help of attendants. Taking into account all these facts, in my considered opinion, a sum of Rs.1,50,000/- would be just and proper compensation for physical pain, shock,

> inconvenience, disablement, mental stress and loss of amenities in life."

In the aforesaid case of Prahlad Rai, this Court considered such permanent disablement to the extent of 70% and after assessing monthly income of the claimant at Rs.3,000/- computed the loss of income at the rate of Rs.1,500/- per month and adopted a multiplier of 18 to assess future loss of income at 3,24,000/-.

So far decision relied upon by the learned counsel for the insurer in Charlie's case (supra) is concerned, therein though the High Court had deleted compensation of Rs.40,000/- towards permanent disability in the total award of Rs.4,68,825/- made by the Tribunal; and the Hon'ble Supreme Court has referred to the requirement of making reasonable deduction on the personal expenditure but has been pleased to observe that the percentage of deduction for personal expenditure cannot be governed by any rigid formula. The claimant therein was 37 years of age and was married. The Hon'ble Supreme Court in the said case of Charlie (supra) has noticed and observed,-

> "17. In case, where the injured has suffered 100 per cent the logic applicable to a deceased can, in appropriate cases, taking note of all relevant factors be reasonably applied.
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> 18. The claimant was deriving income from agriculture.
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> 19. Normal rule about the deprivation of income is directly not applicable to cases where agricultural income is the source of deceased's or injured's income. In that case other circumstances have to be considered."

With reference to such facts and factors, the Hon'ble Supreme Court considered it appropriate to fix the quantum of compensation at Rs.3,50,000/- as against the amount of Rs.4,68,825/- fixed by the Tribunal. The submissions sought to be made by the learned counsel for the insurer that non-pecuniary loss towards permanent disablement is required to be altogether ignored is not supported by the ratio of the decision sought to be relied upon. The award of compensation in the present case has been made while ignoring all the relevant considerations and deserves suitable modification.

On the evidence available on record, this Court is of opinion that the computation of compensation admissible in the present case could be made thus: The claimant has admittedly produced treatment expenditure bills of about

Rs.20,000/- Ex.1 to 93 and of further Rs.840/- Ex.98. Having regard to the circumstances, the claimant-appellant deserves to be allowed treatment expenditure at Rs.22,000/-. In view of the long drawn treatment at Udaipur and Ahmedabad and the nature of injuries sustained, it appears appropriate to allow Rs.3,000/- towards expenditure on special diets; a further Rs.5,000/- on the attendants and another Rs.5,000/- towards transportation. The claimant had suffered injuries that led to amputation of leg and he deserves to be allowed Rs.10,000/- towards injuries. The claimant-appellant has been shown to be working as supervisor with a contractor on a salary of Rs.1,500/- per month and he deserves to be allowed at least two months' loss of income at Rs.3,000/-.

The claimant-appellant has suffered amputation of his leg above knee at the age of 22 years and towards physical pain, inconveniences, disablement and loss of amenities of life, the appellant deserves to be allowed compensation in the sum of Rs.1,50,000/-.

The income of the appellant even if taken at Rs.1,500/- per month and for the purpose of computation of loss, even if an average Rs.1,000/- per month i.e. Rs.12,000/- per annum is taken; and taking permanent disablement at 80%, if

computed with application of multiplier of 16 only, the loss stands at Rs.1,53,600/- and there appears no reason to deprive the claimant of this much compensation on the facts and in the circumstances of the present case.

The claimant is, therefore, entitled for compensation in the sum of Rs.3,51,600/- (22,000/- + 3,000/- + 5,000/- + 5,000/- + 10,000/- + 3,000/- + 1,50,000/- + 1,53,600/-) as against the amount of Rs.1,58,000/- awarded by the Tribunal. The Tribunal has of course awarded interest at the rate of 12% per annum, however, in the overall circumstances of the case and substantial enhancement being made herein, it is considered appropriate to award interest on the enhanced amount of compensation at the rate of 6% per annum from the date of filing of claim application.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The claimant-appellant is awarded compensation in the sum of Rs.3,51,600/- in place of the amount awarded by the Tribunal in the sum of Rs.1,58,000/-. The claimant-appellant, therefore, shall be entitled to a further amount of Rs.1,93,600/- with interest at the rate of 6% per annum from the date of filing of claim application.

The amount payable under the modified award shall be deposited by the respondent-insurer within 30 days from today with the Tribunal. Upon deposit, 50% of the amount shall be placed in the Monthly Income Scheme of Post Office for a minimum period of six years and the claimant-appellant shall be entitled to receive periodical interest thereupon. The remaining amount may be paid cash to the appellant. No costs.

(DINESH MAHESHWARI),J.

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